

AMENDED IN ASSEMBLY APRIL 9, 1996

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL

No. 3435

Introduced by Assembly Member Bowen
(Coauthor: Assembly Member Villaraigosa)

February 23, 1996

An act to *amend Sections 6011 and 6012 of, and to add Chapter 3.2 (commencing with Section 7287.15) to Part 1.7 of Division 2 of, the Revenue and Taxation Code, relating to local taxation.*

LEGISLATIVE COUNSEL'S DIGEST

AB 3435, as amended, Bowen. Local munitions tax.

The Bradley-Burns Uniform Local Sales and Use Tax Law and the Transactions and Use Tax Law provide, ~~as specified,~~ for the *specified* imposition of sales, transactions, and use taxes by cities, counties, and local districts, which are administered by the State Board of Equalization.

This bill would authorize a city, county, or city and county to levy a *special* tax, *as defined*, by ordinance, approved by a $\frac{2}{3}$ vote of the electors, at specified rates on the sale at retail within its jurisdiction of *firearms, as defined, and* munitions, as defined. It would require that any ordinance levying a tax pursuant to this bill provide that the local entity imposing the tax shall contract with the State Board of Equalization to administer and enforce the tax. It would require the tax to be collected by every retailer of a taxed item and would require the retailer to remit the tax to the board. It would require the

board to allocate the tax revenues, in part, to the board for its administrative costs, with the balance to the levying local entities, and would require each local entity to expend those revenues for purposes of trauma care, hospital care, juvenile delinquency prevention programs, gang intervention programs, or gun safety programs, as specified. It would also provide that certain existing provisions with respect to local taxes shall, to the extent feasible and subject to specified exceptions, govern the administration of any tax so imposed.

The Sales and Use Tax Law imposes a state sales and use tax on the gross receipts from the sale of tangible personal property sold at retail in this state and on the sales price of tangible personal property purchased from a retailer for the storage, use, or other consumption of that property in this state by the purchaser.

This bill would provide, for purposes of that law, that the terms “sales price” and “gross receipts” do not include the amount of any tax imposed upon firearms or munitions by a city, county, or city and county pursuant to the bill.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. This act shall be known and may be cited
2 as the “Local Hospital Emergency Room Financing Act
3 of 1996.”

4 SEC. 2. Section 6011 of the Revenue and Taxation
5 Code is amended to read:

6 6011. (a) “Sales price” means the total amount for
7 which tangible personal property is sold or leased or
8 rented, as the case may be, valued in money, whether
9 paid in money or otherwise, without any deduction on
10 account of any of the following:

11 (1) The cost of the property sold.

12 (2) The cost of materials used, labor or service cost,
13 interest charged, losses, or any other expenses.

14 (3) The cost of transportation of the property, except
15 as excluded by other provisions of this section.



(b) The total amount for which the property is sold or leased or rented includes all of the following:

(1) Any services that are a part of the sale.

(2) Any amount for which credit is given to the purchaser by the seller.

(3) The amount of any tax imposed by the United States upon producers and importers of gasoline and the amount of any tax imposed pursuant to Part 2 (commencing with Section 7301) of this division.

(c) "Sales price" does not include any of the following:

(1) Cash discounts allowed and taken on sales.

(2) The amount charged for property returned by customers when that entire amount is refunded either in cash or credit, but this exclusion shall not apply in any instance when the customer, in order to obtain the refund, is required to purchase other property at a price greater than the amount charged for the property that is returned. For the purpose of this section, refund or credit of the entire amount shall be deemed to be given when the purchase price less rehandling and restocking costs are refunded or credited to the customer. The amount withheld for rehandling and restocking costs may be a percentage of the sales price determined by the average cost of rehandling and restocking returned merchandise during the previous accounting cycle.

(3) The amount charged for labor or services rendered in installing or applying the property sold.

(4) (A) The amount of any tax (not including, however, any manufacturers' or importers' excise tax, except as provided in subparagraph (B)) imposed by the United States upon or with respect to retail sales whether imposed upon the retailer or the consumer.

(B) The amount of manufacturers' or importers' excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for which the purchaser certifies that he or she is entitled to either a direct refund or credit against his or her income tax for the federal excise tax paid.

(5) The amount of any tax imposed by any city, county, city and county, or rapid transit district within the State

1 of California upon or with respect to retail sales of
2 tangible personal property, measured by a stated
3 percentage of sales price or gross receipts, whether
4 imposed upon the retailer or the consumer.

5 (6) The amount of any tax imposed by any city, county,
6 city and county, or rapid transit district within the State
7 of California with respect to the storage, use or other
8 consumption in that city, county, city and county, or rapid
9 transit district of tangible personal property measured by
10 a stated percentage of sales price or purchase price,
11 whether the tax is imposed upon the retailer or the
12 consumer.

13 (7) Separately stated charges for transportation from
14 the retailer's place of business or other point from which
15 shipment is made directly to the purchaser, but the
16 exclusion shall not exceed a reasonable charge for
17 transportation by facilities of the retailer or the cost to the
18 retailer of transportation by other than facilities of the
19 retailer. However, if the transportation is by facilities of
20 the retailer, or the property is sold for a delivered price,
21 this exclusion shall be applicable solely with respect to
22 transportation which occurs after the purchase of the
23 property is made.

24 (8) Charges for transporting landfill from an
25 excavation site to a site specified by the purchaser, either
26 if the charge is separately stated and does not exceed a
27 reasonable charge or if the entire consideration consists
28 of payment for transportation.

29 (9) The amount of any motor vehicle, mobilehome, or
30 commercial coach fee or tax imposed by and paid the
31 State of California that has been added to or is measured
32 by a stated percentage of the sales or purchase price of a
33 motor vehicle, mobilehome, or commercial coach.

34 (10) (A) The amount charged for intangible personal
35 property transferred with tangible personal property in
36 any technology transfer agreement, if the technology
37 transfer agreement separately states a reasonable price
38 for the tangible personal property.

39 (B) If the technology transfer agreement does not
40 separately state a price for the tangible personal

1 property, and the tangible personal property or like
2 tangible personal property has been previously sold or
3 leased, or offered for sale or lease, to third parties at a
4 separate price, the price at which the tangible personal
5 property was sold, leased, or offered to third parties shall
6 be used to establish the retail fair market value of the
7 tangible personal property subject to tax. The remaining
8 amount charged under the technology transfer
9 agreement is for the intangible personal property
10 transferred.

11 (C) If the technology transfer agreement does not
12 separately state a price for the tangible personal
13 property, and the tangible personal property or like
14 tangible personal property has not been previously sold
15 or leased, or offered for sale or lease, to third parties at a
16 separate price, the retail fair market value shall be equal
17 to 200 percent of the cost of materials and labor used to
18 produce the tangible personal property subject to tax.
19 The remaining amount charged under the technology
20 transfer agreement is for the intangible personal
21 property transferred.

22 (D) For purposes of this paragraph, “technology
23 transfer agreement” means any agreement under which
24 a person who holds a patent or copyright interest assigns
25 or licenses to another person the right to make and sell a
26 product or to use a process that is subject to the patent or
27 copyright interest.

28 (11) The amount of any tax imposed upon diesel fuel
29 pursuant to Part 31 (commencing with Section 60001).

30 (12) *The amount of any tax imposed upon firearms or*
31 *munitions by a city, county, or city and county pursuant*
32 *to Chapter 3.2 (commencing with Section 7287.15) of*
33 *Part 1.7.*

34 *SEC. 3. Section 6012 of the Revenue and Taxation*
35 *Code is amended to read:*

36 6012. (a) “Gross receipts” mean the total amount of
37 the sale or lease or rental price, as the case may be, of the
38 retail sales of retailers, valued in money, whether
39 received in money or otherwise, without any deduction
40 on account of any of the following:

1 (1) The cost of the property sold. However, in
2 accordance with any rules and regulations as the board
3 may prescribe, a deduction may be taken if the retailer
4 has purchased property for some other purpose than
5 resale, has reimbursed his or her vendor for tax which the
6 vendor is required to pay to the state or has paid the use
7 tax with respect to the property, and has resold the
8 property prior to making any use of the property other
9 than retention, demonstration, or display while holding
10 it for sale in the regular course of business. If that
11 deduction is taken by the retailer, no refund or credit will
12 be allowed to his or her vendor with respect to the sale of
13 the property.

14 (2) The cost of the materials used, labor or service cost,
15 interest paid, losses, or any other expense.

16 (3) The cost of transportation of the property, except
17 as excluded by other provisions of this section.

18 (4) The amount of any tax imposed by the United
19 States upon producers and importers of gasoline and the
20 amount of any tax imposed pursuant to Part 2
21 (commencing with Section 7301) of this division.

22 (b) The total amount of the sale or lease or rental price
23 includes all of the following:

24 (1) Any services that are a part of the sale.

25 (2) All receipts, cash, credits and property of any kind.

26 (3) Any amount for which credit is allowed by the
27 seller to the purchaser.

28 (c) "Gross receipts" do not include any of the
29 following:

30 (1) Cash discounts allowed and taken on sales.

31 (2) Sale price of property returned by customers when
32 that entire amount is refunded either in cash or credit,
33 but this exclusion shall not apply in any instance when the
34 customer, in order to obtain the refund, is required to
35 purchase other property at a price greater than the
36 amount charged for the property that is returned. For the
37 purpose of this section, refund or credit of the entire
38 amount shall be deemed to be given when the purchase
39 price less rehandling and restocking costs are refunded or
40 credited to the customer. The amount withheld for

1 rehandling and restocking costs may be a percentage of
2 the sales price determined by the average cost of
3 rehandling and restocking returned merchandise during
4 the previous accounting cycle.

5 (3) The price received for labor or services used in
6 installing or applying the property sold.

7 (4) (A) The amount of any tax (not including,
8 however, any manufacturers' or importers' excise tax,
9 except as provided in subparagraph (B)) imposed by the
10 United States upon or with respect to retail sales whether
11 imposed upon the retailer or the consumer.

12 (B) The amount of manufacturers' or importers'
13 excise tax imposed pursuant to Section 4081 or 4091 of the
14 Internal Revenue Code for which the purchaser certifies
15 that he or she is entitled to either a direct refund or credit
16 against his or her income tax for the federal excise tax
17 paid.

18 (5) The amount of any tax imposed by any city, county,
19 city and county, or rapid transit district within the State
20 of California upon or with respect to retail sales of
21 tangible personal property measured by a stated
22 percentage of sales price or gross receipts whether
23 imposed upon the retailer or the consumer.

24 (6) The amount of any tax imposed by any city, county,
25 city and county, or rapid transit district within the State
26 of California with respect to the storage, use or other
27 consumption in that city, county, city and county, or rapid
28 transit district of tangible personal property measured by
29 a stated percentage of sales price or purchase price,
30 whether the tax is imposed upon the retailer or the
31 consumer.

32 (7) Separately stated charges for transportation from
33 the retailer's place of business or other point from which
34 shipment is made directly to the purchaser, but the
35 exclusion shall not exceed a reasonable charge for
36 transportation by facilities of the retailer or the cost to the
37 retailer of transportation by other than facilities of the
38 retailer. However, if the transportation is by facilities of
39 the retailer, or the property is sold for a delivered price,
40 this exclusion shall be applicable solely with respect to

1 transportation which occurs after the sale of the property
2 is made to the purchaser.

3 (8) Charges for transporting landfill from an
4 excavation site to a site specified by the purchaser, either
5 if the charge is separately stated and does not exceed a
6 reasonable charge or if the entire consideration consists
7 of payment for transportation.

8 (9) The amount of any motor vehicle, mobilehome, or
9 commercial coach fee or tax imposed by and paid to the
10 State of California that has been added to or is measured
11 by a stated percentage of the sales or purchase price of a
12 motor vehicle, mobilehome, or commercial coach.

13 (10) (A) The amount charged for intangible personal
14 property transferred with tangible personal property in
15 any technology transfer agreement, if the technology
16 transfer agreement separately states a reasonable price
17 for the tangible personal property.

18 (B) If the technology transfer agreement does not
19 separately state a price for the tangible personal
20 property, and the tangible personal property or like
21 tangible personal property has been previously sold or
22 leased, or offered for sale or lease, to third parties at a
23 separate price, the price at which the tangible personal
24 property was sold, leased, or offered to third parties shall
25 be used to establish the retail fair market value of the
26 tangible personal property subject to tax. The remaining
27 amount charged under the technology transfer
28 agreement is for the intangible personal property
29 transferred.

30 (C) If the technology transfer agreement does not
31 separately state a price for the tangible personal
32 property, and the tangible personal property or like
33 tangible personal property has not been previously sold
34 or leased, or offered for sale or lease, to third parties at a
35 separate price, the retail fair market value shall be equal
36 to 200 percent of the cost of materials and labor used to
37 produce the tangible personal property subject to tax.
38 The remaining amount charged under the technology
39 transfer agreement is for the intangible personal
40 property transferred.

(D) For purposes of this paragraph, “technology transfer agreement” means any agreement under which a person who holds a patent or copyright interest assigns or licenses to another person the right to make and sell a product or to use a process that is subject to the patent or copyright interest.

(11) The amount of any tax imposed upon diesel fuel pursuant to Part 31 (commencing with Section 60001).

For purposes of the sales tax, if the retailers establish to the satisfaction of the board that the sales tax has been added to the total amount of the sale price and has not been absorbed by them, the total amount of the sale price shall be deemed to be the amount received exclusive of the tax imposed. Section 1656.1 of the Civil Code shall apply in determining whether or not the retailers have absorbed the sales tax.

(12) The amount of any tax imposed upon firearms or munitions by a city, county, or city and county pursuant to Chapter 3.2 (commencing with Section 7287.15) of Part 1.7.

SEC. 4. Chapter 3.2. (commencing with Section 7287.15) is added to Part 1.7 of Division 2 of the Revenue and Taxation Code, to read:

CHAPTER 3.2 LOCAL FIREARMS AND MUNITIONS TAX

7287.15. (a) In addition to any other tax authorized ~~by this division, the legislative body of any city, county, or city and county, may levy a tax by an ordinance approved by this division, the governing body of a city, county, or city and county may levy a special tax (as defined in Section 53721 of the Government Code) by an ordinance approved~~ by two-thirds of the electors voting on the measure on the privilege of selling at retail within its jurisdiction ~~at either or both of the following:~~

(1) All firearms, at a rate of one dollar (\$1), or a multiple thereof, per firearm, but not to exceed a rate of ten dollars (\$10) per firearm, or at a proportionate rate for any other quantity or fraction thereof.

1 (2) *All* munitions, at a rate of one cent (\$0.01), or a
2 multiple thereof, per munition, but not to exceed a rate
3 of ten cents (\$0.10) per munition, or at a proportionate
4 rate for any other quantity or fraction thereof.

5 (b) For purposes of this chapter:

6 (1) “Firearms” means weapons from which a
7 projectile is fired by gunpowder.

8 (2) “Munitions” means projectiles with their fuses,
9 propelling charges, or primers fired from weapons, and
10 any of the individual components thereof, *as specified in*
11 *the local ordinance.*

12 ~~(2)~~

13 (3) “Trauma center” means a trauma facility, as
14 defined in Article 2.5 (commencing with Section
15 1798.160) of Chapter 6 of Division 2 of the Health and
16 Safety Code, and rules or regulations promulgated
17 thereunder.

18 ~~(3)~~

19 (4) “Trauma treatment” means treatment of one or
20 more types of potentially seriously injured persons that is
21 provided by a trauma center.

22 7287.16. (a) Any ordinance levying a tax pursuant to
23 this chapter shall provide that the city, county, or city and
24 county, shall contract prior to the effective date of the
25 ordinance with the State Board of Equalization to
26 perform all functions incident to the administration or
27 operation of the ordinance for as long as the city, county,
28 or city and county, has an operative ordinance enacted
29 pursuant to this chapter.

30 (b) *Any ordinance levying a tax pursuant to this*
31 *chapter shall take effect immediately upon its approval*
32 *by the voters, but shall become operative on the first day*
33 *of the first calendar quarter commencing more than 110*
34 *days after voter approval of the ordinance.*

35 7287.17. Every retailer engaged in business in a city,
36 county, or city and county that has an operative
37 ordinance enacted pursuant to this chapter shall, at the
38 time of making the sales of munitions, collect the tax from
39 the consumer and give to the consumer a receipt therefor

1 in the manner and form prescribed by the State Board of
2 Equalization.

3 7287.18. All revenues collected pursuant to a tax
4 authorized by this chapter shall be remitted to the State
5 Board of Equalization and allocated by the board as
6 follows:

7 (a) First, for reimbursement ~~to~~ of the board, pursuant
8 to the contract between the board and the city, county,
9 or city and county, of the reasonable costs of
10 administering and enforcing the ordinance on behalf of
11 the local entity.

12 (b) Second, for transmission not later than ~~March~~
13 *April* 15 of each calendar year to each city, county, or city
14 and county that has an operative ordinance enacted
15 pursuant to this chapter, in an amount corresponding to
16 the amount of revenues derived within that jurisdiction
17 from a tax levied by that ordinance.

18 Moneys transmitted to a city, county, or city and county
19 pursuant to this section shall only be expended by that
20 local entity for purposes of trauma care, hospital care,
21 juvenile delinquency prevention programs, gang
22 intervention programs, or gun safety programs. These
23 moneys shall be used to supplement, not supplant,
24 existing funding levels for ~~the~~ *those purposes and*
25 *programs. Moneys transmitted to a county may be*
26 *transferred by the county to any city within the county's*
27 *boundaries, to be expended or used by the city only as*
28 *specified in this paragraph.*

29 7287.19. The State Board of Equalization shall
30 administer and enforce this chapter, and may prescribe,
31 adopt, and enforce rules and regulations for those
32 purposes pursuant to Chapter 3.5 (commencing with
33 Section 11340) of Part 1 of Division 3 of Title 2 of the
34 Government Code. The board may prescribe the extent
35 to which any rule or regulation shall be applied without
36 retroactive effect.

37 7287.20. Except as provided in Section 7287.21, to the
38 extent feasible or practicable, Chapter 5 (commencing
39 with Section 6451), Chapter 6 (commencing with Section
40 6701), Chapter 7 (commencing with Section 6901), and

1 Chapter 8 (commencing with Section 7051) of Part 1,
2 shall govern determinations, collection of tax,
3 overpayments and refunds, and administration under this
4 chapter.

5 7287.21. (a) The return and payment of the tax
6 imposed by this chapter is due and payable to the board
7 annually on or before February 15 following the end of
8 the calendar year during which the tax was collected.

9 (b) For purposes of computing interest due on any
10 amount of tax not paid when due, interest shall be
11 computed to the 15th day of each succeeding month.

12 (c) Except in the case of fraud, intent to evade this
13 chapter or accompanying rules and regulations, or failure
14 to make a return, every notice of a deficiency
15 determination shall be mailed within three years after the
16 15th day of the second month following the one-year
17 period for which the amount is proposed to be
18 determined or within three years after the return is filed,
19 whichever period expires later. In the case of a failure to
20 make a return, every notice of determination shall be
21 mailed within eight years after the 15th day of the second
22 month following the one-year period for which the
23 amount is proposed to be determined.

24 (d) (1) Except as provided in paragraph (2), no
25 refund shall be approved by the board after three years
26 from the 15th day of the second month following the
27 one-year period for which the overpayment was made, or
28 with respect to determinations made under Article 2
29 (commencing with Section 6481), Article 3
30 (commencing with Section 6511), and Article 4
31 (commencing with Section 6536) of Chapter 5 of Part 1,
32 after six months from the date the determinations
33 become final, or after six months from the date of
34 overpayment, whichever period expires later, unless a
35 claim therefor is filed with the board within that period.
36 No credit shall be approved by the board after the
37 expiration of that period unless a claim for credit is filed
38 with the board within that period, or unless the credit
39 relates to a period for which a waiver has been granted
40 pursuant to Section 6488.

1 (2) A refund may be approved by the board for any
2 period for which a waiver has been granted under Section
3 6488 if a claim for refund is filed with the board before the
4 expiration of the waiver period.

5 (e) In all other instances where the due date specified
6 in subdivision (a) conflicts with a due date specified in
7 Chapter 5 (commencing with Section 6451), Chapter 6
8 (commencing with Section 6701), Chapter 7
9 (commencing with Section 6901), and Chapter 8
10 (commencing with Section 7051) of Part 1, the due date
11 specified in subdivision (a) shall be substituted for any
12 due date specified in those chapters, and periods running
13 from or to, or otherwise based on, the otherwise
14 applicable due date shall be adjusted accordingly.

